

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**STATE OF TENNESSEE v. KEVIN MATTHEW YANICK**

**Appeal from the Circuit Court for Blount County**  
**No. C-16813     David Reed Duggan, Judge**

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**No. E2009-00663-CCA-R3-CD - Filed December 2, 2009**

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The Defendant, Kevin Matthew Yanick, appeals the trial court's order revoking his probation for his convictions for possession with intent to deliver more than one-half gram of cocaine, a Class B felony, possession with intent to deliver a Schedule III controlled substance, a Class D felony, and possession of drug paraphernalia, a Class A misdemeanor. The State has moved this court to affirm the trial court's order pursuant to Tennessee Court of Criminal Appeals Rule 20. The State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**  
**Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Kevin Matthew Yanick.

Robert E. Cooper, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

The record reflects that on September 14, 2007, the Defendant was given concurrent sentences of eight years as a Range I offender for the possession of cocaine conviction, three years for the possession of a Schedule III substance conviction, and eleven months and twenty-nine days for the possession of drug paraphernalia conviction. The sentences were suspended, and the Defendant was placed on supervised probation. A probation violation warrant was filed in December 2007. Following a hearing, the Defendant was ordered to serve sixty days in the Blount County Jail, which he did. Another probation violation warrant was issued on November 18, 2008, alleging that the Defendant was unemployed, that he had failed to report to his probation officer, that he had failed to provide a DNA sample, that he had not paid court costs, fines, or fees, and that he had not submitted to a drug and alcohol assessment.

At the revocation hearing, the Defendant stipulated he had committed the violations alleged in the warrant, and defense counsel asked for a hearing to determine the proper punishment for the violations. The Defendant's probation officer testified about the Defendant's noncompliance with the terms of probation. He stated the Defendant first reported to him in July 2007, as a result of convictions in Georgia for entering an automobile and credit card fraud, which had been transferred to Tennessee. He said the Defendant was self-employed. He said he saw the Defendant only once after the Defendant pleaded guilty to the Tennessee charges in September 2007. He said he filed a probation violation warrant in December 2007, and the Defendant was arrested on that warrant in July 2008. He said that at the hearing on the December 2007 warrant, the Defendant promised to abide by all the rules of his probation. He said that the Defendant was sentenced to serve sixty days in the county jail and that he returned to supervised probation. He said that after the Defendant's release from the county jail, the Defendant reported one time, on August 29, 2008. He said he made repeated attempts to contact the Defendant, including telephoning and visiting the Defendant's home. He said that the telephone calls went unanswered and that no one appeared to be at home when he visited. He said he had not seen the Defendant or heard from him since August 29, 2008. He said the Defendant had not submitted to an alcohol and drug assessment, had not paid court costs, fines, or probation fees, and had not provided a DNA sample. He said the Defendant was a positive person and would not admit to any problems other than with employment. He said the Defendant stated that he did not always have the same employer and that he was working "under the table." He said that the Defendant had not been charged with any new offenses. He said that he had no opinion as to whether the Defendant had a substance abuse problem and that four months' observation was an inadequate time in which to make such a determination.

The Defendant testified that he had a tenth-grade education and that he worked in construction. He said that when he was released from the county jail after the first probation violation, he worked for Charlie Walton. He said that when Mr. Walton's business failed, he went to work for a Mr. Hurst, but Mr. Hurst's business also failed. He said little work was available in construction in August 2007. He said that he took small jobs to support himself and that his employers drove him to and from work because he had no car and no driver's license. He said a neighbor was willing to give him a truck to drive if he could get his driver's license reinstated. He agreed that he stopped seeing his probation officer, but he said he was worried because he had no money to pay his fees. He said he thought he saw the probation officer more than once but could have been mistaken. He agreed he could not be supervised if he did not meet with his probation officer. He said it was wrong for him to fail to report. He said he pleaded guilty to the possession of a Schedule III substance because he was tired of going to court. He said that he had not used drugs or alcohol while on probation and that he would not test positive for drugs. He said that if he could get his driver's license reinstated, he would do better on probation. He said that if the trial court returned him to probation he would leave the construction business and try to obtain employment at a fast food restaurant. He agreed the trial judge at the first probation violation hearing told him that if he would report to his probation officer, the probation officer would work out an arrangement concerning the fees he owed. He said that his neighbor was not like his previous employers and would provide reliable transportation for him to report to his probation officer. He said the woman he lived with did not have a driver's license.

The trial court found that the Defendant had stipulated he violated his probation and that his suspension of sentence should be revoked. The court granted appropriate jail credits and ordered the Defendant to serve the remainder of his sentence.

A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e). If a trial court revokes a defendant's probation, its options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c); -310; see State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless it appears that there has been an abuse of discretion. See State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981).

The record in the present case reveals that the trial court did not abuse its discretion in revoking the Defendant's probation. The Defendant stipulated to all probation violations. Despite the Defendant's claim that he wanted "to try" to comply with the terms of probation, the court was within its discretion in revoking probation where there was no evidence the Defendant's situation had altered in such a manner as to allow him to comply with the terms of his probation.

The State's motion for affirmance pursuant to Rule 20 is granted because the opinion provides no precedential value. Tenn. Ct. Crim. App. R. 20. The proceeding occurred before the trial court without a jury, the action was not a determination of guilt, the evidence does not preponderate against the trial court's findings, and no error of law is apparent on the record. Tenn. Ct. Crim. App. R. 20(1)(a), (2). The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

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JOSEPH M. TIPTON, PRESIDING JUDGE